

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.684 OF 1997

JUDGMENT

The unsuccessful plaintiffs in O.S. No.33 of 1989 on the file of the Subordinate Judge (hereinafter will be referred as trial Court), Karimnagar District, preferred this appeal against Decree and Judgment passed by the trial Court dated 11.04.1997, whereby the suit filed by the plaintiffs for declaration of title to the schedule property and to declare that the plaintiffs are entitle to withdraw the amount of Rs.61,952/- and for recovery of possession of the schedule property, was dismissed.

For the sake of convenience, the parties in this appeal hereinafter be referred to as they were arrayed before the trial Court in O.S.No.33 of 1989.

During pendency of the suit, plaintiff Nos.6 to 9 got impleaded as per orders in I.A.No.158 of 1996, dated 27.02.1996 and as the first plaintiff died, his Legal Representatives were brought on record as per orders in I.A.No.72 of 1997, dated 13.02.1997. Defendant No.1 also died while the suit was pending and defendant No.4 was brought on record as Legal Representative of defendant No.1.

The plaintiffs filed the suit to declare that they are absolute owners of the land in Survey No.47/ABC admeasuring Acs.6.08 guntas of dry land situated at Laxmipuram Village, Karimnagar Revenue Mandal, which is described in the plaint schedule and that the plaintiffs be put in vacant possession of the suit land and to declare that they are entitled to claim compensation amount of Rs.61,952/- awarded in favour of Defendant No.1/Claimant 12 in O.P.No.161 of 1985 on the file of the Subordinate Judge, Karimnagar in respect of the land admeasuring Ac.1.28 guntas in Survey No.47/ABC of Laxmipuram Village and restrain defendant No.1 from withdrawing or receiving compensation amount of Rs.61,952/- as Claimant

No.12 in the said O.P.

It is alleged in the plaint that the plaintiffs are the joint owners and possessors of the land bearing Acs.7.36 guntas in the said Survey number. Originally it belongs to Gandla Narsaiah-grandfather of plaintiff No.1, Gandla Venkaiah-grandfather of plaintiff Nos.2 and 3 in revenue records and Gandla Chandraiah-adopted father of defendant No.4 and brother of the plaintiff No.5's husband. The pahani patrikas for the year 1954-55 and 1984-85 also disclose that the above said persons are the pattadars and owners who died leaving behind them the plaintiffs as legal heirs who succeeded their property. Thus the plaintiffs succeeded the suit schedule property as legal heirs of the deceased owners along with other properties and they are in continuous possession and enjoyment of the schedule property since the date of death of the original owners. However, the names of the plaintiffs were not mutated in the revenue records as pattadars. While plaintiffs are continuously in possession and enjoyment of the property, defendant Nos.2 and 3 proposed to acquire Ac.1.28 guntas out of the suit schedule land for excavation of canal of D/84 and as such issued notification in the year 1983 under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') and after completion of due process for acquisition, an award was passed in the year 1984-85, but without issuing any notice to the plaintiffs either under Section 9 or under Section 10 of the Act by defendant No.3. As such, the plaintiffs were not aware about the acquisition proceedings and thereby they could not appear before the Special Deputy Collector and hence defendant Nos.2 and 3 were made parties in the Original Suit. Defendant No.1 is a stranger to the plaintiffs' family and he has no right whatsoever in the schedule property. But defendant No.1 being lessee with a *malafide* intention to usurp the land, colluded with ex-patwari and Special Deputy Collector, succeeded in his attempt to get compensation amount for the land acquired i.e.,Ac.1.28 guntas. Therefore, the award passed by the Special Deputy Collector is illegal and liable to be set aside and the same is not

binding on the plaintiffs.

In a reference under Section 18 of the Act of 1894 on the claim submitted by defendant No.1, which was registered as O.P.No.161 of 1985, the Sessions Judge Court, Karimnagar enhanced compensation from Rs.2,000/- to 4,000/- per acre. In the said reference under Section 18 of the Act of 1894, the plaintiffs were not made parties. The plaintiffs requested defendant No.1 to take steps for cancellation of the award and deliver vacant possession of the land. But, no purpose was served. On the other hand, defendant No.1 denied the title of the plaintiffs, while setting up adverse possession. Defendant No.1 is not entitled to claim any right over the property or even compensation for the land acquired by defendant Nos.2 and 3 of an extent of Ac.1.28 guntas. Hence, the suit.

Defendant No.1 resisted the claim of the plaintiffs while contending that the plaintiffs were not the joint owners and possessors of the land bearing Survey No.47, which was originally owned by Gandla Chandraiah, Gandla Narsaiah, Gandala Venkaiah. The said persons are brothers, who partitioned the property bearing Survey No.47 before preparation of Khasra records in the year 1954-55. After partition of the said property by the three brothers, the revenue authorities assigned separate numbers for the land allotted to the share of each. In the said partition, G.Chandriah was allotted Acs.3.25 guntas in Survey No.47/A, G.Narsaiah was allotted Acs.3.25 guntas in Survey No.47/B and G.Venkaiah was allotted Acs.3.26 guntas in Survey No.47/C. After partition, their names were mutated against their respective properties in the Khasra records. The plaintiffs are not legal representative of the said Chandraiah, Narsaiah and Venkaiah. G.Chandraiah was not blessed with any children, plaintiff Nos.4 and 5 are not the legal representatives of G.Chandraiah, plaintiff No.4 was not even the adopted son of G.Chandraiah, whereas, plaintiff No.5 is no way concerned with the land of G.Chandraiah. G.Mallaiah was blessed with

daughter who is also the legal heir of said Mallaiah and the suit is bad for non-joinder of necessary parties. G.Venkaiah, leaving behind plaintiff Nos.2 and 3, as his sons along with his wife and three daughters, who are also necessary parties to the suit and in their absence, the suit cannot be decided. Hence, on the ground of non-joinder of legal heirs of Venkaiah, the suit is liable to be dismissed.

Defendant No.1 purchased Acs.3.23 guntas of land from G.Narasaiah on 20.05.1956 under agreement of sale for consideration of Rs.150/-. Since then, defendant No.1 is in possession and enjoyment of Acs.3.23 guntas in Survey No.47/A in pursuance of the unregistered agreement of sale.

Defendant No.1 also purchased Acs.3.24 guntas from G.Venkaiah in Survey No.47/C on 08.04.1989 under unregistered agreement of sale for consideration of Rs.143/-. Since then, he is in possession and enjoyment of the same.

Defendant No.1 dug two wells in Survey No.47/B, installed an oil engine to the said wells for lifting water. Defendant No.1 also filed declaration under Andhra Pradesh Land Reforms (ceiling on agricultural holdings) Act, 1973 (for short, 'the Act of 1973') and obtained an order fixing standard holding of defendant No.1 which includes the land covered by Survey Nos.47/B and 47/C purchased by him under agreements of sale, obtained ryothwari passbook from the authorities under the Record of Rights Act. The name of defendant No.1 was also mutated in the revenue records as cultivator in respect of the land bearing Survey Nos.47/B and C as per pahani patrikas.

It is further contended that Ac.1.28 guntas out of the Survey No.47/B was acquired by the Government and the provisions of the Act of 1894, notification under Section 4(1) of the Act of 1894 was published on 24.08.1983 calling for objection and also informed by beating of tom-tom and an award enquiry was conducted on 06.11.1984 and the award was finalized

on 17.11.1984. Despite notice under the Act of 1894, the plaintiffs did not appear before the Land Acquisition Officer. As the plaintiffs did not put forth their claim before the Land Acquisition Officer, they are not entitled to claim any relief for recovering of Rs.61,952/- as claimed by them. Defendant No.1 alone being owner, is entitled to recover the amount.

Defendant No.1 also perfected his title to the land in Survey No.47/B and C by adverse possession, even otherwise entitled to protection under Section 53(A) of Transfer of Property Act.

Defendant No.1 is in possession and enjoyment of Acs.5.19 guntas in Survey No.47/B and C excluding the area covered by pothkharab.

The plaintiffs claim in the suit is barred by limitation. The plaintiffs are not entitled to claim declaratory relief as they are out of the possession for more than 12 years and finally prayed for dismissal of the suit.

Defendant No.1 died during pendency of the suit and his adopted son was brought on record as defendant No.4 and he adopted written statement filed by defendant No.1.

Defendant Nos.2 and 3 did not file any written statements.

Basing on the above pleadings, the trial Court framed the following six issues:

- (i) Whether the plaintiffs are the joint owners of the suit schedule land?
- (ii) Whether defendant No.1 has purchased the suit Survey No.47/B&C and perfected his title over the same?
- (iii) Whether the suit is bad for non-joinder and all the heirs of Gandla Venkaiah and Gandla Ramaiah-the original owners of the suit land?
- (iv) Whether the suit is barred by limitation?
- (v) Whether the plaintiffs are entitled for the compensation amount claimed and for the declaration?

(vi) To what relief?

During the course of trial, for plaintiffs, PWs.1 to 5 were examined, marked Exs.A1 to A6 and for defendants DWs.1 to 4 were examined and marked Exs.B1 to B36.

Upon hearing argument of both the counsel, the trial Court considered oral and documentary evidence, held that the plaintiffs are not entitled to claim any of the relief and dismissed the suit.

The plaintiffs aggrieved by the decree and judgment passed by the trial Court preferred the present appeal, being unsuccessful before the trial Court, raising several contentions. The main contentions raised before this Court are as under:

- (a) The plaintiffs are entitled for recovery of possession as the title was transferred to defendant No.1 under alleged agreements of sale. But the trial Court did not consider as to whether title can be transferred and committed an error in dismissing the suit.
- (b) The trial Court admitted Exs.B1 and B2 in evidence. In fact, they are styled as agreement of sale or if they are treated as sale deeds worth more than Rs.100/-, it is required to be registered under the provision of Registration Act. Therefore, for want of registration, the documents marked as Exs.B1 and B2 are inadmissible evidence. But the trial Court basing on inadmissible evidence, dismissed the suit erroneously.
- (c) The trial Court on erroneous appreciation of law, held that defendant No.1 is entitled to protect the possession under Section 53 A of the Transfer of Property Act, 1882 (for short, 'the Act of 1882'), by contending that defendant No.1 perfected his title by adverse possession.
- (d) Defendant obtained no permission under Section 47

and validated transfer under Section 50-B of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act,1950'), covered by Exs.B1 and B2. In such case, the defendant is not entitled to protect his possession. However, the trial Court on wrong appreciation of fact and law, dismissed the suit, and finally prayed to set aside the decree and judgment of the trial Court, allowing this appeal and pass a decree in favour of the plaintiffs.

During hearing of this appeal, Sri Bankatlal Mandhani, learned counsel for the plaintiffs/appellants would contend that the suit property admittedly belongs to Venkaiah, Chandraiah and Narsaiah and plaintiffs are their legal heirs. In the absence of valid transfer of title they are the legal owners. Consequently, they are entitled to claim declaratory relief against defendant Nos.1 to 4. But the trial Court did not appreciate the specific pleadings with reference to law and committed error.

It is further contended that in the absence of validation of alleged transfer under Exs.B1 and B2, the plaintiffs are not entitled to claim protection under law and drawn the attention of the judgment of the Apex Court in ***Edukanti Kistamma (died) through LRs. and others Vs. S.Venkatareddy (died) through LRs. and others***^[1], in support of their contentions. It is also contended by the learned counsel for the appellants that when an award was passed under the provision of the Act of 1894 in the name of one of the co-sharers, the other co-sharers are entitled to claim their due share and placed reliance on the judgment reported in ***A.Viswanatha Pillai and others Vs. The Special Tahsildar for land acquisition No.IV and others***^[2]. The finding of the trial Court that defendant No.1 and defendant No. 4 are entitled to protection under Section 53-A of the Act of 1882 is erroneous, in view of the law declared by this Court in ***Modem Rajamouli Vs. Modem Roshaiah and others***^[3]. Finally,

it is contended that declining relief by the trial Court basing on Exs.B1 and B2 which are in-admissible in evidence, is totally illegal exercise of jurisdiction which the trial Court is not supposed to exercise. Therefore, the judgment of the trial Court based on in admissible evidence is liable to be set aside and prayed to pass a decree in favour of the plaintiffs/appellants while setting aside the decree and judgment passed by the trial Court.

Per contra, Sri A.Sudershan Reddy, learned counsel for the respondents would contend that when the schedule property was sold, the legal heirs of defendant No.1 are entitled to continue in possession and enjoyment of the property, being the owners in view of the mutation of his name in the concerned revenue records. Apart from that in view of long and continuous possession of the property by defendant No.1 and after his death defendant No.4 is entitled to claim possessory title as they perfected their right by adverse possession. Therefore, the plaintiffs are not entitled to claim a decree for declaration of their title, so also, recovery of Rs.61,952/- and that the claim of the plaintiffs is barred by limitation.

Considering rival contentions from the material available on record, the points that arise for consideration are as follows:

- (i) whether the alleged purchase of property under Exs.B1 and B2 confers any right or title over the immovable property?
- (ii) Whether in the absence of validation of transfer of agricultural land under the provisions of the A.P.Act of 1950, the alleged sales under Exs.B1 and B2 are valid?
- (iii) Whether the plaintiffs succeed the schedule property, after death of G.Chandraiah, G.Narsaiah and G.Venkaiah as legal heirs and whether they are entitled to claim declaration of title to the schedule property?
- (iv) Whether the claim of plaintiffs is barred by limitation?
- (v) Whether plaintiffs are entitled for declaration that they are entitled to recover of compensation of Rs.61,952/- as per

award passed in O.P.No.161 of 1985?

POINT Nos.1 to 3:

Undisputedly, the original owners are G.Chandraiah, G.Narasaiah, G.Venkaiah. Plaintiff No.4 being the alleged adopted son of G.Chandraiah claiming to be legal heir and other plaintiffs are the legal heirs of G.Narasaiah and G.Venkaiah. Except disputing the right of defendant No.4 as adopted son of G.Chandraiah, the relationship between the plaintiffs and the deceased Narsaiah and Venkaiah is not disputed by defendant No.1 in the written statement. Further, a vague allegation is made in the written statement that the plaintiffs are not legal heirs of deceased Chandraiah, Narsaiah and Venkaiah.

Undisputedly, the suit schedule property originally belongs to the three brothers G.Chandraiah, G.Venkaiah and G.Narsaiah and defendant No.1 claimed that he purchased the property of an extent of Acs.3.26 guntas from G.Venkaiah and Acs.3.25 guntas from G.Narsaiah under Exs.B1 and B2. The admission made by defendant No.1 in the written statement, which is a judicial admission proved that G.Chandraiah and G.Narsaiah and G.Venkaiah were the original owners of the schedule property. Now the claim of the plaintiffs is that they succeeded the property from G.Chandraiah, Narsaiah and Venkaiah under rules of succession as legal heirs under Hindu Succession Act. However, defendant No.1 resisted the claim of the plaintiffs only, on the ground that he purchased the schedule property under Exs.B1 and B2, agreements of sale for Rs.150/- and Rs.143/- . The unregistered agreement of sale Ex.B1, dated 20.05.1956 allegedly executed by G.Narsaiah, S/o.Ramaiah, conveying his share, similarly Ex.B2 is an un-registered agreement of sale executed by Venkaiah. Consideration paid under Exs.B1 and B2 is more than Rs.100/-. The trial Court collected stamp duty and penalty payable on Exs.B1 and B2, admitted documents in evidence. According to Section 54 of the Act of 1882, Sale is a transfer of

ownership in exchange for a price paid or promised or part-paid and part-promised. Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value, less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Even according to Section 17 of the Registration Act, the non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, shall be registered under the Section.

Even as per Section 54 of the Act of 1882, it is a compulsory registered document.

The contention of defendant No.1 is that Exs.B1 and B2 are only agreements of sale but not a sale deed. Agreement of sale under Section 54 of the Act of 1882 means a contract for the sale of immovable property which shall take place on the terms settled between the parties. But here, the total consideration agreed to be paid under Exs.B1 and B2 was already paid, but not legally transferred the property. Therefore, the documents Exs.B1 and B2 are unregistered sale deeds, but not agreements of sale, as the contents are totally silent as to the transaction takes effect on the terms settled between the parties in future by executing regular registered sale deed. The admission of Exs.B1 and B2 in evidence by the trial Court is erroneous. In the appendix of evidence also, the trial Court described the nature of documents Exs.B1 and B2 as simple sale deeds. Therefore,

Exs.B1 and B2 are inadmissible in evidence.

If for any reason, Ex.B1 and B2 are treated as agreements of sale, such agreements of sale would not create any interest over the immovable property or confer any right in the immovable property to the purchaser as per Section 54 of the Act of 1882. In such case, at best, the right of defendant No.1 is to enforce the terms of agreements as per the provisions of Specific Relief Act (for short, 'the Act of 1963') by filing suit for specific performance and at best he is entitled to protect his possession under Section 53A of the Act of 1882. He cannot claim absolute rights in the property which he allegedly purchased under Exs.B1 and B2.

The main endeavor of the plaintiffs' counsel is that the sale of property under Exs.B1 and B2 is sale is invalid under Sections 47, 50A and 50B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act of 1950'). Admittedly, the land is situated within the limits of Telangana area and such transfers are covered by the A.P. Act of 1950 and according to the provisions of the A.P.Act of 1950, unless permission is obtained under Section 47 of Act, the land holder is not entitled to transfer the property and if for any reason, the property is transferred, unless it is validated under Section 50A and 50B of the Act, the said sales are not valid. In support of his contention, learned counsel for the appellants drawn the attention of this Court to a judgment reported in ***Edukanti Kistamma (died) through LRs. and others Vs. S.Venkatareddy (died) through LRs. and others(supra)***, wherein the Apex Court, while deciding a similar case held as under:

“...issue of ownership certificate attained finality in proceedings for restoration of possession being consequential relief, pendency of the said proceedings did not derive the rights of the parties, which has already been determined. Proceedings for restoration of possession are only in respect of execution of the orders which had already been passed. Purchase of suit schedule property by respondents is doubtful since pleadings as of purchase are not consistent throughout showing different years of purchase. Even otherwise, purchase of

suit land by the respondents is not in conformity of Section 47 of the Act of 1950 and the sale deeds were hence void *ab-initio*".

Relying upon the principles laid down in the above said judgment, when the sale deeds were not in conformity with Section 47 of the A.P. Act of 1950, the sales are not valid. According to Sub-Section (1) of Section 47 of the Act, no permanent alienation and no transfers of agricultural lands are valid unless it has been made with the previous sanction of the Collector.

I feel that it is appropriate to extract Section 50-B (1) of the A.P. Act, 1950 as it would serve useful purpose and extracted hereunder for better appreciation:

"50-B. Validation of certain alienations and other transfer of Agricultural lands:-

(1) Notwithstanding anything contained in this Chapter, where any alienation or other transfer of agricultural land took place-

(a) on or after the 10th June, 1950, but before the date of coming into force of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 and where possession of such land was given to the alienee or transferee before such date of coming into force; and

(b) on or after the coming into force of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961, but before the date of the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Third Amendment) Act, 1969 and where possession of such land was given to the alienee or transferee before such commencement and such alienation or transfer is not inconsistent force in the Telangana Area of this State as it stood prior to its amendment by the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1959 and where possession of such Land was given to the alienee or transferee before such commencement and such alienation or transfer is not inconsistent with the proviso of A.P. Ceiling on Agricultural Act, 1961, Provided that no permanent alienation or other transfer of agricultural land shall be valid unless it was made with the previous sanction of the Collector.

On analysis of Section 50-B (1) of this Act, it is incumbent on the transferor to get validated permanent alienation by applying to Tahasildar within prescribed time.

Learned counsel for the plaintiffs mainly based his claim regarding validation of alienation or transfer of legal possession, on the Judgment rendered in C.V. Narayana Reddy (supra 1) wherein the Division Bench of

this Court while deciding the dispute under the A.P. Act, 1950 in para 26 onwards discussed about the validity of alienation or transfer of agricultural lands in view of repeal of Sections 47, 50 and 50-A of the Act, 1950 and relying on the earlier Judgment in K. Parvathamma v. Excise commissioner reads as follows:

“We emphasize this ratio of the Full Bench time and again for the simple reason that this was laid down at a time when S.50-B of the Tenancy Act was very much in vogue and the effect of the same, as stated, continued right up to 31.03.1972. Notwithstanding the same the Full Bench categorically concluded as above. Therefore, we firmly hold that subsequent to deletion of S.47 of the Tenancy Act, no sanction is at all necessary for the finalization even with regard to agreements of sale entered into prior the deletion of S. 47, by way of registration of sale deeds or otherwise. A fortiori, the possession of the lands given in pursuance of agreements of sale is quite valid and lawful and, therefore, the parties concerned are entitled to avail the provisions of Section 53-A of the Transfer of Property Act.”

It is clear from the above Judgment though Section 50-B of the A.P. Act, 1950 was in vogue still permanent alienations or transfers are valid. The conclusions of Division Bench are based on earlier Full Bench Judgment in K. Parvathamma v. Excise Commissioner, where Full Bench of this Court held as follows:

“... even for revenue sales sanction under Section 47 of the Act before the amendment of 1969 was required before confirmation of such sales. We see nothing in this decision which is different from what we have held. It is noteworthy that in the above decision, the further question of the validity of the transfer and possession as per the Regulation did not arise.”

We are in agreement with the aforesaid observation. It did not really fall before the Full Bench whether the transfer and possession as per the Regulation was valid. But it certainly fell before the Full Bench, to which reference has been made above, wherein they unequivocally held, while pointedly dealing with the question which is similar to the one before us as under:

“But it has to be noted that in view of the recent legislation viz., Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (Third Amendment) (Act 12 of 1969) which came into force on 18.03.1969, Section 47 of the other connected provisions of the main Act have been omitted with the result that no sanction is at all necessary before confirming the sale in favour of the 5th respondent.”

When a similar question came up before this Court in **Shaik Bikkam Ali @ Gulam Mohd. Sarvar** (Supra2), the Single Judge held in Para 17 as follows:

“Since Section 47 of the Act, 1950 stood deleted, it is no more imperative to show that any such permission was obtained, nor the absence would invalidate either the transaction or the possession of the land in the hands of the alienee or transferee. Subsequent to the deletion of Section 47 of the Tenancy Act, no sanction is at all necessary for the finalization even with regard to agreements of sale entered into prior to the deletion of Section 47, by way of registration of sale deeds or otherwise.”

The main reason, for the learned single judge of this Court to arrive at such conclusion is only the Judgment of the Full Bench in K. Parvathamma’s case and Division Bench Judgment of this Court in C.V. Narayana Reddy’s case (supra). K. Pravathamma’s case is prior to repeal of Section 47 of the A.P. Act, 1950 (Act 12 of 1969) which came into force on 18.03.1969. But the Division Bench in C.V. Narayana Reddy’s case is subsequent to repeal of Sections 47, 49, 50 and 50-A of the A.P. Act, 1950, but in C.V. Narayana Reddy’s case, amendment to Section 50-A of the Act, 1950 was not considered.

As Exs.B1 and B2 were not in conformity and with Section 47 of the Act of 1950 and not validated under Section 50A and 50B of the Act of 1950, the purchaser defendant No.1 is not entitled to claim any protection as Exs.B1 and B2 are void *ab initio*, in view of the judgments stated supra, since no valid transfer took place between Narsaiah, Venkaiah and defendant No.1. In the absence of proof of transfer of title, legally, the plaintiffs being legal heirs alone are entitled to claim right in the property.

When the plaintiffs claimed a declaratory relief, which is purely discretionary under Section 34 of the Act of 1963, the initial onus of proof is on the plaintiffs to establish their title. By adducing cogent and satisfactory evidence, they are not entitled to take advantage of the defense set up by the defendants.

To substantiate the contentions of the plaintiffs, PW1-Gandla Raja Shekaraiah was examined. In the examination-in-chief, he testified in support of the plaintiffs' plea. In the cross examination, P.W.1 admitted that the owners or original pattadars by name Ramaiah, Mallaiah and Chandraiah gave land bearing Survey No.47 to defendant No.1 in the capacity of tenant. PW1 testified as follows:

“My father died 12 years back. It was G.Chandraiah, who died about ten years back, G.Ramaiah died about 8 years back, nothing was reduced into writing at the time of giving land to defendant No.1, bearing Survey No.47, as tenant, since last 15 or 16 years. Hence, I cannot say that the terms and conditions on which the land was given to the defendants on tenancy”.

It is evident from the admission extracted above that it is the case of the plaintiffs that defendant No.1 was inducted into possession as tenant. Infact, in the plaint also, the plaintiffs specifically contended that defendant No.1 being a lessee under the original owners claimed right in the schedule property. Therefore, defendant No.1 was originally a tenant, who contended that later he purchased property under Exs.B1 and B2. Moreover, Exs.B1 and B2 are not valid documents and they are void *ab initio*. Even if the admission is accepted, the original owners are G.Chandraiah, G.Venkaiah and G.Narsaiah. Defendant No.1 is only a tenant.

PW.2 is Gandla Kistaiah, defendant No.4, is the alleged adopted son of tenant. He also testified in the same lines as that of PW1., more particularly, ascertaining that he is the adopted son. PW3 is the servant working under defendant No.1., even according to his evidence, defendant No.1 cultivated the land while he was working as farm servant under him on lease basis. The lease amount was Rs.5,200/- per acre, per annum. Defendant No.1 used to raise green gram and some time used the land for grazing cattle. In the cross examination, PW3 admitted that he own Ac.0.30

guntas of land. He expressed his inability to disclose the details of lease between defendant No.1 and the original owners G.Chandraiah, G.Narsaiah and G.Venkaiah. In that view of the matter, the evidence of PW3 is not helpful to prove the case of either plaintiffs or defendants. PW4 is neighbour, who supported the plaintiff's case in all respects.

The crucial evidence on record is the evidence of DW1. As usual, he supported the plea raised by him in the written statement about acquiring the property under Exs.B1 and B2, continuing in possession and enjoyment of the property. In the cross examination, DW1 admitted that he never saw the evidence for partition among Chandraiah, Narsaiah and Venkaiah. He learnt that defendant No.1 who is the father of DW1 purchased the suit schedule land. Defendant No.4 is not aware of acquisition of property and his admissions in the cross examination are sufficient to conclude that Exs.B1 and B2 are not valid. In the cross examination dated 07.02.1994, DW.1 admitted as follows:

“we did not obtain validation certification from the Tahsildar concerned under Section 50B of the Act of 1950, in respect of the said land purchased by my father, without obtaining permission under Section 47 of the Act of 1950, through Exs.B1 and B2, which are simple sale deeds”.

This crucial evidentiary admission would totally destroy the case of defendant No.1, who is claiming title by virtue of Exs.B1 and B2. The defendants witness-DW.2 was also examined to testify about purchase of land under Exs.B1 and B2. Irrespective of the evidence of DWs.2 and 4 assuming that even Exs.B1 and B2 were executed by Narsaiah, Venkaiah, they are invalid under law, in view of the bar under Sections 47 and 50 B of the Act of 1950.

In view of the above admission, the ownership of the property of Chandraiah, Narsaiah and Venkaiah, in the absence of valid transfer of title in favour of defendant No.1, defendants are not entitled to claim any

protection and plaintiffs being the legal heirs alone are entitled to claim the right in the schedule property. The trial Court, based on Exs.B1 and B2 which are inadmissible in evidence concluded that the defendants became owners of the property. Before the trial Court, a plea regarding validity of Exs.B1 and B2 was raised, the trial Court did not consider the objection with regard to validity of Exs. B1 and B2 in proper perspective, but held that defendant No.1 is entitled for protection under Section 53-A of the Act of 1882. With regard to the question of title over the property, the plaintiffs placed reliance on the judgment reported in ***K.Raji Reddy and others Vs.K.Susheela Bai and others***^[4], but in the later judgment reported in ***Ushanna and others Vs. Samba Goud and others***^[5], the Division Bench of this Court considered the effect of alienation of land to third party to defeat the rights of the tenant under the provisions of the Act of 1950. Section 53A of the Act of 1882 cannot be applied. The trial Court concluded that when the transfer is made by the title holder of defendant No.1, the question of defeating the rights of the tenant causing any prejudice to the plaintiffs does not arise. It is not a dispute between the tenant and other party *alienee*, it is the dispute between the owner and tenant - purchaser from title holder. He is a tenant as per the admissions made by PW.1 in the cross examination and in the plaint. The alienation, if any, in favour of a tenant by the land holder is not in contravention of Section 47, since it is not intended to defeat the right of the tenant. In such a case, no protection under Section 47 or validation under Section 50 B of the Act of 1950 is applicable.

The trial Court concluded that the plaintiffs are entitled to protection under Section 53-A of the Act of 1882 and placed reliance on the judgment of this Court reported in ***C.V.Narayan Reddy Vs. Katan Guru Raghavareddy***^[6]. The full Bench in the said judgment, has considered requirements under Sections 47 and 50 of the Act of 1950 and Section 53-A of the Act of 1882 and held that Section 53A can be invoked for excluding

the said land from the transferee's holding. This Court further held that the defendant being purchaser is entitled to protect his possession under Section 53-A of the Act of 1882. Undoubtedly, as per both evidentiary and judicial admissions, it is proof positive about the relationship between Chandraiah, Narsaiah and Venkaiah and defendant No.1 as landlord and tenant which is governed by the A.P. Act of 1950. Exs.B1 and B2 are only in favour of the tenant in possession i.e., defendant No.1 by G.Narsaiah and Venkaiah by executing Exs.B1 and B2. Therefore, the question of invalidating in the event of violation of Section 47 and 50 of the A.P. Act of 1950 does not arise as the same is covered by Exs.B1 and B2 which would not defeat the right of tenant in occupation. Therefore, the sale in favour of the tenant in occupation under Ex.B1 and B2 cannot be said to be invalid or *ab initio* void. In such case, he is entitled to claim protection.

Learned counsel for the plaintiffs, contended that unless permission is obtained under Section 47 and validity under Section 50B of the Act of 1950, the purchaser is not entitled to protection under Section 53A of the Act of 1883. This Court in ***Modem Rajamouli Vs. Modem Roshaiah and others***(supra3) held as follows:

“though Section 47 was deleted, the several transfers which were taken place from 1950 to 1969 could be validated with the aid of proceedings under Section 50-B and thereby the invalidity could be cured. Section 50-B was introduced with a definite purpose to save the invalid transactions that have taken place between June 10, 1950 to March 18, 1969 and the time was extended finally upto March 31, 1972. if the transferee or alienee did not avail himself of this opportunity of getting his alienation and possession validated under Section 50-B, he should suffer the consequences, since the transfer and delivery of possession remained invalid and unlawful after March, 31, 1972. There is no possibility of validating all the invalid transactions that took place preceding that date. The contract of sale and the unauthorized and illegal possession of the land are null and void and the protection of Section 53-A of the

T.P.Act is not available.”

In the facts of the above judgment, third party purchased the property to defeat the rights of tenant in possession. But here, defendant No.1 himself purchased the property without obtaining permission under Section 47 and the validating sale under Section 50 B does not arise. Therefore, defendant No.1 though continued in possession during his life time thereafter his son defendant No.1 who is continuing in possession of the property originally as tenant and after obtaining Exs.B1 and B2 as owners of the property, he is entitled to claim protection under Section 53-A of the Act of 1882, subject to satisfying the requirements under Section 53-A. To claim protection under Section 53A of the Act of 1882, plaintiffs have to prove the following six requirements:

- (i) There must be contract to transfer for consideration in immovable property.
- (ii) The contract must be in writing signed by the transferee or by someone on his behalf.
- (iii) The writing must be in such words from which the terms necessary for considering transfer can be ascertained.
- (iv) The transfer must in part performance of the contract take possession of the property or in part thereof.
- (v) The transferee must have done some act in furtherance of the contract
- (vi) The transferee must have performed or be willing to perform his part of the contract.

In the present case, the trial Court found that defendant No.1 has paid the total consideration under Exs.B1 and B2 and in possession and enjoyment of the property while expressing his readiness and willingness to obtain registered sale deed for the property. Therefore, defendant No.1 satisfied the requirements to claim protection under Section 53-A of the Act of 1882 and concluded that defendant is entitled to protection under Section

53-A of the Act of 1882.

The plaintiffs initially did not claim relief of recovery of possession. They claimed relief of declaration under Section 34 of the Act of 1963. When the plaintiffs claimed declaratory relief, which is discretionary and equitable relief under Section 34 of the Act of 1963, they must approach the Court with clean hands and are not entitled to take advantage of weakness in the defense set up by the defendants. The plaintiffs were not in possession as per the entries in Khasra pahanis marked as Exs.A4 and A5, whereas, defendant No.1 proved that he was in possession and enjoyment of the property by producing as many as 31 documents marked as Exs.B5 to B36. Certified copies of pahanis which substantiate the contention of the plaintiffs that the defendant No.1 is cultivating land and also obtained pattadar passbooks marked as Exs.B3, in column No.16 of pahanis produced by defendant No.1, defendant No.1 is cultivator and G.Narsaiah and Venkaiah were the pattadars as per column No.11 of the documents. But, suppressing these facts, the plaintiffs claimed absolute title over the property. According to pleadings and evidence, defendant No.1 was a tenant in occupation of schedule property, so he was a protected tenant and he cannot be evicted by filing a civil suit. He or his legal representatives can be evicted by following necessary procedure for evicting protected tenant. However, when once the plaintiffs suppressed certain facts and made an attempt to obtain discretionary and equitable relief, the plaintiffs are disentitled to claim relief. Accordingly, the point is held against plaintiffs and in favour of defendants.

POINT No.4:

One of the contentions raised by the defendants is that reliefs claimed by the plaintiffs are barred by limitation. The trial Court framed issue No.4, discussed about adverse possession. The plaintiffs claimed both the relief of declaration of title under Section 34 of Act of 1963 and recovery of

possession under Section 5 of the Act of 1963. When the suit is for both declaration of title and for recovery of possession, Article 5 of limitation Act (for short, 'the L.A.Act') applies. The relief under the L.A.Act was published on 24.08.1983 under Section 4(1) of the L.A.Act. Award was passed on 17.11.1984, reference under Section 18 of the L.A.Act was made in 1985, reference was registered as O.P.No.161 of 1985. On receipt of notice under Sections 9 and 10 of the L.A.Act, defendant No.1 filed his objection claiming exclusive right in the property. Defendant No.1 did not claim any hostile title to his property against the plaintiffs to their knowledge. Limitation for recovery of possession starts only from the date of claiming adverse title to the property. Suit was filed in the year 1989, thus the suit is within limitation of 12 years. However, the claim for declaration of right to receive compensation is governed by Article 58 of limitation Act and it is barred by limitation.

In view of my foregoing discussion, the transfer in favour of defendant No.1 by Venkaiah, Narsaiah cannot be said to be invalid as his transfer is not in favour of a person other than tenant. Though, the transfer is not by registered sale deed, still the defendants are entitled to protect their possession under Section 53-A of the Act of 1882 in the suit filed by the plaintiffs for recovery of possession. Hence, the plaintiffs are not entitled to claim any relief against the defendants.

In view of my fore-going discussion, I find no ground warranting interference with the judgment and decree passed by the trial Court, the appeal is devoid of merits and deserves to be dismissed.

In the result, the appeal is dismissed confirming the decree and judgment of trial Court. No costs.__

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dt.07.08.2015

vhb

[\[1\]](#) (2010) 1 SCC 756
[\[2\]](#) (1991) 4 SCC 17
[\[3\]](#) (2000) 3 ALD 677
[\[4\]](#) 1986(1)ALT 44
[\[5\]](#) 1986 (3)APLJ 32
[\[6\]](#) AIR 1980 AP 89